

New Mexico Department of Transportation Alternative Project Delivery

Scope

For New Mexico Department of Transportation construction and reconstruction projects, alternative project delivery systems may be authorized when the Cabinet Secretary of Transportation and/or the New Mexico Transportation Commission makes a determination in writing that it is appropriate and in the best interest of the state to use the system on a specific project. The alternative project delivery system does not replace the design-bid-build system typically used to deliver the NMDOT program but will be used as a supplemental system for specific projects identified in the program.

Typical Project Delivery

The design-bid-build remains the preferred delivery system for the NMDOT unless one of these alternative project delivery systems is justified.

Implementation

Any rules and regulations required to implement this legislation shall be promulgated through emergency rule making by the NMDOT and commence immediately following the effective date. The NMDOT shall solicit input from industry stakeholders during the rule making process. The rule making shall consider at minimum, a limitation on number of projects, percent of program budget, and consideration for establishing either minimum or maximum dollar amounts that can be used for the various alternative project delivery systems.

Definitions

In this article, unless the context otherwise requires:

- A. "Commission" means New Mexico Transportation Commission.
- B. "Construction-manager-at-risk" means a project delivery method in which:
 - (1) There is a contract for construction services that is separate from the contract for design services.
 - (2) Design services are performed under a separate procurement of professional design services contract, or may be performed with department employees, or a combination of the two.
 - (3) The contractor assumes the risk for construction at a contracted guaranteed maximum price, and provides consultation and collaboration regarding the construction during and after design of the project.
 - (4) The contract for construction services may be entered into at the same time as the design services are commenced or at a later time.
 - (5) Design and construction of the project may be in sequential phases or concurrent phases.
 - (6) Finance services, maintenance services, warranty services, preconstruction services and other related services may be included.
- C. "Construction manager general contractor" means a project delivery method in which:
 - (1) There is a contract for construction services that is separate from the contract for design services.
 - (2) A contractor is engaged through a construction services contract to participate in project design efforts with the intent of awarding a construction contract should the price proposed by the contractor meet the owner's expectations.
 - (3) Design services are performed under a separate procurement of professional design services contract, or may be performed with department employees, or a combination of the two.
 - (4) The contractor assumes the risk for construction at a contracted guaranteed maximum price, and provides consultation and collaboration regarding the construction during and after design of the project.
 - (5) The contract for construction services may be entered into at the same time as the design services are commenced or at a later time.

- (6) The contractor must perform at least 40% of the work with its own forces and is responsible for entering into subcontracts.
- (7) Design and construction of the project may be in sequential phases or concurrent phases.
- (8) Finance services, maintenance services, warranty services, preconstruction services and other related services may be included
- D. "Construction services" means either of the following for construction-manager-at-risk and job-order-contracting project delivery methods:
 - (1) Construction, excluding design services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
 - (2) A combination of construction and, as determined by the department, one or more related pre-construction and construction services, such as finance services, maintenance services, warranty services, construction management, third party coordination, constructability reviews, cost engineering reviews, cost estimating, value engineering, scheduling, contract package development, planning and design services and preconstruction services, as those services are authorized in the definition of construction-manager-at-risk or job-order-contracting.
- E. "Contract" means all types of department agreements, regardless of what they are called, for procurements pursuant to this article.
- F. "Contractor" means any individual, partnership, joint venture, corporation or other legal entity that is appropriately licensed in this state that has a contract with the department.
- G. "Department" means New Mexico Department of Transportation
- H. "Design-build" means the process of entering into and managing a lump sum contract between the department and another party in which the other party agrees to both design and build a highway, a structure, a facility or other items specified in the contract.
- I. "Design-build offeror" means any individual, partnership, joint venture, corporation or other legal entity that is appropriately licensed in this state and that offers to furnish the necessary design services, in addition to construction of the work, whether by itself or through subcontracts, including subcontracts for architectural and engineering services.
- J. "Design services" means engineer services, survey services, or landscape architect services.
- K. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in chapter 61. Article 23 NMSA 1978.
- L. "Finance services" means financing for a construction services project.
- M. "Guaranteed maximum price" means the maximum amount to be paid by the central purchasing office for construction, including the cost of the work, the general conditions and the fees charged by the construction manager at risk.
- N. "Job-order-contracting" means a project delivery method in which:
 - (1) The job-order-contract is an indefinite quantity construction contract or price agreement which requires the contractor to furnish an indeterminate quantity of specified construction services and, at the election of the department, may or may not include a guaranteed minimum amount of work.
 - (2) The construction to be performed is specified in job orders issued during the contract.
 - (3) Finance services, maintenance services, warranty services, preconstruction services, design services and other related services may be included.
 - (4) The contract resulting from the procurement is referred to as a "job-order contract."
- O. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in chapter 61, article 24B NMSA 1978.
- P. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

structures, buildings or real property.

- Q. "NMDOT" means the New Mexico Department of Transportation
- R. "Offeror" means any individual, partnership, joint venture, corporation or other legal entity that is appropriately licensed in this state that submits a response to a request for qualifications or request for proposal.
- S. "Preconstruction services" means services during the design phase.
- T. "Program" means the New Mexico State Transportation Improvement Program (STIP)
- U. "Secretary" means Cabinet Secretary of Transportation
- V. "Specific single project" means a project that is constructed at a single location, at a common location or for a common purpose.
- W. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the department.
- X. "Survey Services" means those professional survey services that are within the scope of survey practice in chapter 61, article 23 NMSA 1978.
- Y. "Warranty Services" means a contract requirement for the contractor to fix or repair specific items of workmanship and or material contained in the roadway prism and detailed in the warranty terms. The warranty terms will detail the length in terms of time and the workmanship and or material elements covered by the warranty.

DESIGN-BUILD METHOD OF PROJECT DELIVERY

Notwithstanding any other law, the department may use the design-build method of project delivery on a project if the department makes a determination in writing that it is appropriate and in the best interests of the department to use the design-build method of project delivery for that project, except that the department shall not enter into a contract to operate any structure, facility or other item pursuant to this article.

The estimated cost of the project shall not include the cost to procure any right-of-way or other cost of condemnation. The cost to procure any right-of-way or other cost of condemnation remains at all times the responsibility of the department. The department shall obtain all necessary rights-of-way, but may utilize the D/B Contractor to provide right-of-way support services to the department.

The department is responsible for preparation of all environmental studies, documentation, and required clearances including the scope of any remediation as a result of the environmental commitments. The department shall obtain all necessary environmental clearances, but may utilize the D/B Contractor to provide investigation, remediation, and permitting support services to the department.

To ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the Secretary shall adopt procedures for procuring a project using the design-build method of project delivery. The procedure shall establish criteria for selecting, procuring, and contracting a project using the design-build method for project delivery.

Design-Build Determination Factors

The department, in its procedures, shall address the following criteria as a minimum in establishing the basis for determining when to use the design-build method of project delivery:

- A. The extent to which it can adequately define the project requirements.
- B. The time constraints for delivery of the project.
- C. The capability and experience of potential teams.
- D. The suitability of the project for use of the design-build method of project delivery in the areas of safety, time, schedule, costs and quality.
- E. The capability of the department to manage and oversee the project, including the employment of experienced personnel or outside consultants.
- F. Other criteria the department deems relevant.

Design-Build; Two-Phase Solicitation

If the department determines that the design-build method of project delivery is appropriate, the department shall establish a two-phase procedure for awarding the design-build contract.

During phase one, and before solicitation, the Secretary shall appoint a selection team of at least three persons. At least one-half of the selection team shall be architects or engineers who are registered pursuant chapter 61, article 23 NMSA 1978 or chapter 61, article 15. The selection team members may be either department employees, outside consultants or licensed contractors. Any consultant or contractor who is serving on the selection team and who is not a department employee shall not be otherwise involved in the project as part of any offerors' team.

The first phase in the solicitation process shall be the request for qualifications. The department shall prepare documents for a request for qualifications.

The request for qualifications shall include the following:

- A. The minimum qualifications of the design-build offeror.
- B. A scope of work statement and schedule.
- C. Documents defining the project requirements.
- D. The form of contract to be awarded identifying general terms and conditions.
- E. The selection criteria for compiling a short list. No more than five offerors shall be included on the short list.
- F. The amount of stipend which will be provided to design-build offerors selected for the short list that submit a responsive but unsuccessful proposal in phase two.
- G. A description of the phase two evaluation factors and selection process.
- H. The maximum time allowable for design and construction.
- I. The department's estimated budget for design and construction.

The selection team shall evaluate the design-build qualifications of responding offerors and shall compile a short list of offerors in accordance with technical and qualifications-based criteria.

The second phase in the solicitation process shall be the request for proposals. The department shall issue a request for proposals to the design-build offerors on the short list. The request shall include:

- A. The scope of work, including programmatic, performance and technical requirements, conceptual design, specifications and functional and operational elements for the delivery of the completed project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to chapter 61, article 23 NMSA 1978 or chapter 61, article 15 NMSA 1978.
- B. Description of selection criteria.
- C. Copies of the contract documents that the successful offeror will be expected to sign.
- D. The maximum time allowable for design and construction.
- E. The department's estimated budget for design and construction.
- F. The requirement that a proposal be segmented into two parts, a technical proposal and a price proposal. Each proposal shall be in a separately sealed, clearly identified package and shall include the date and time of the submittal deadline.
- G. The amount of stipend which will be provided to design-build offerors selected for the short list that submit a responsive but unsuccessful proposal in phase two.
- H. Other information relevant to the project.

If stated in the request for proposals, in order to inform each offeror whether the offeror's concept is responsive to the request for proposals, the department may enter into a separate confidential discussion with each offeror on the short list to discuss alternative technical concepts that the offeror may propose.

The department shall award the contract to the responsive design-build offeror that represents the best value to the department. The best value is determined based on quality and price as defined in the request for proposal selection criteria. The department reserves the right to cancel the procurement or reject all proposals. If the department does not award a contract, all responsive offerors shall receive the stipend.

The department shall pay the stipend to each responsive offeror within ninety days after the award of the contract or the decision not to award a contract. In consideration for paying the stipend, the department may use any ideas or information contained in the proposals.

CONSTRUCTION MANAGER GENERAL CONTRACTOR (CMGC) / CONSTRUCTION MANAGER AT RISK (CMAR) METHOD OF PROJECT DELIVERY

Notwithstanding any other law, the department may use the CMGC/CMAR method of project delivery on a project if the department makes a determination in writing that it is appropriate and in the best interests of the department to use the CMGC/CMAR method of project delivery for that project, except that the department shall not enter into a contract to operate any structure, facility or other item pursuant to this article.

The estimated cost of the project shall not include the cost to procure any right-of-way or other cost of condemnation. The cost to procure any right-of-way or other cost of condemnation remains at all times the responsibility of the department. The department shall obtain all necessary rights-of-way, but may utilize the CMGC/CMAR to provide right-of-way support services to the department.

The department is responsible for preparation of all environmental studies, documentation, and required clearances including the scope of any remediation as a result of the environmental commitments. The department shall obtain all necessary environmental clearances, but may utilize the CMGC/CMAR to provide investigation, remediation, and permitting support services to the department.

To ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the Secretary shall adopt procedures for procuring a project using the CMGC/CMAR method of project delivery. The procedure shall establish criteria for selecting, procuring, and contracting a project using the CMGC/CMAR method for project delivery.

CMGC/CMAR Determination Factors

The department, in its procedures, shall address the following criteria as a minimum in establishing the basis for determining when to use the CMGC/CMAR method of project delivery:

- A. The extent to which it can adequately define the project requirements.
- B. The time constraints for delivery of the project.
- C. The capability and experience of potential teams.
- D. The suitability of the project for use of the CMGC/CMAR method of project delivery in the areas of safety, time, schedule, costs and quality.
- E. The capability of the department to manage and oversee the project, including the employment of experienced personnel or outside consultants.
- F. Other criteria the department deems relevant.

CMGC/CMAR Solicitation Process

If the department determines that the CMGC/CMAR method of project delivery is appropriate, the department shall establish a procedure for solicitation and award of CMGC/CMAR contracts. The CMGC/CMAR project team shall consist of three components;

- A. The Department (Owner)
- B. The Designer (department staff or design firm)
- C. The CMGC/CMAR

The department may use a design firm for design and preconstruction services, or may perform the design and preconstruction services with department employees, or a combination of the two. If the department elects to use a design firm to perform all or a portion of the design and preconstruction services, the department shall enter into a professional services agreement with the design firm using a qualifications based selection (QBS) process.

The department shall enter into a separate agreement with a CMGC/CMAR contractor for CMGC/CMAR services. The CMGC/CMAR services shall consist of a two phase contract with the CMGC/CMAR. Phase one of the contract shall consist of design consultation and/or preconstruction services. Phase two shall consist of construction services to build the project.

The CMGC/CMAR services may be procured using either a two-step or three-step procedure. A two-step procedure shall include a request for qualifications and an interview. A three-step procedure shall include a request for qualifications, a request for proposals, and an interview.

Before solicitation of the CMGC/CMAR contract, the department shall appoint a selection committee of at least three persons. At least one-half of the selection committee shall be architects or engineers who are registered pursuant to chapter 61, article 23 NMSA 1978 or chapter 61, article 15. The selection committee members may be either department employees, outside consultants or licensed contractors. The selection committee shall consist of at least one representative from the contracting industry. Any consultant or contractor who is serving on the selection committee and who is not a department employee shall not be otherwise involved in the project as part of any offeror's team. The selection committee shall develop an evaluation process and shall specify either a two-step or three-step best-value selection procedure.

- A. The first step in the solicitation process shall be the request for qualifications. The department shall prepare documents for a request for qualifications. A request for qualifications shall be published in accordance with Section 13-1-104 NMSA 1978 and shall include at a minimum the following:
- (1) a statement of the minimum qualifications for the CMGC/CMAR, including the requirements for:
 - (a) a contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act;
 - (b) registration pursuant to Section 13-4-13.1 NMSA 1978;
 - (c) a minimum bond capacity;
 - (d) the ability to self perform at a minimum 40% of the total construction contract value; and
 - (e) a minimum of 25% of the total construction contract value must be subcontracted to qualified firms
 - (2) a statement of the scope of work to be performed, including:
 - (a) the location of the project and the total amount of money available for the project;
 - (b) a proposed schedule, including a deadline for submission of the statements of qualification;
 - (c) specific project requirements and deliverables;
 - (d) the composition of the selection committee;
 - (e) a description of the process the selection committee shall use to evaluate qualifications;
 - (f) a proposed contract; and
 - (g) a detailed statement of the relationships and obligations of all parties, including the CMGC/CMAR, agents of the department, such as an engineer, and the department
 - (3) The selection criteria for compiling a short list. No more than five offerors shall be included on the short list.
 - (4) A description of the multi-phase selection process and selection criteria.

The selection committee shall evaluate the statements of qualifications submitted by the offerors and shall compile a short list in accordance with technical and qualifications-based criteria.

- B. If the selection committee has chosen a two-step procedure, the committee shall interview the short listed offerors. The selection committee shall rank the offerors interviewed and shall recommend to

the department the offeror determined to be the most qualified based on the highest ranking.

- C. If the selection committee has chosen a three-step procedure, the selection committee shall issue a request for proposals and evaluate the proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA 1978 except that:

- (1) the request for proposals shall be sent only to those determined to be qualified and short-listed pursuant to Subsection A of this section;
- (2) the selection committee shall evaluate the proposals, rank the proposals and conduct interviews
- (3) The selection committee shall rank the offerors interviewed and shall recommend to the department the offeror determined to be the most qualified based on the highest ranking.

In evaluating and ranking offerors statements of qualifications, proposals and results of interviews, and in the final recommendation of a CMGC/CMAR contractor, the selection committee shall consider:

- (1) the offeror's experience with construction of similar types of projects;
- (2) the qualifications and experience of the offeror's personnel, subcontractors and consultants and the role of each in the project;
- (3) the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;
- (4) all other selection criteria, as stated in the request for qualifications and the request for proposals

- D. The department shall negotiate the first phase of the CMGC/CMAR contract with the most qualified offeror. The first phase of the CMGC/CMAR contract shall consist of design consultation and/or preconstruction services.

The department or designee may continue negotiations in accordance with this section until a contract is signed with a qualified offeror. Should the department or designee be unable to negotiate a satisfactory contract with the offeror considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that offeror shall be formally terminated. The department or designee shall then undertake negotiations with the second most qualified offeror. Failing accord with the second most qualified offeror, the department or designee shall formally terminate negotiations with the offeror. The department or designee may then undertake negotiations with the remaining qualified offerors in the order ranked by the selection committee. Should the department or designee be unable to negotiate a contract with any of the short-listed offerors, the department or designee shall formally terminate negotiations. The department reserves the right to terminate the procurement process and initiate a new request for proposals should the department or designee be unable to negotiate a satisfactory contract with the first or second most qualified offeror.

As the design becomes finalized, the department and the CMGC/CMAR shall enter into negotiations for the second phase of the CMGC/CMAR contract. The second phase of the CMGC/CMAR contract shall consist of construction services to build the project. The department shall prepare an independent estimate to assist in validating the CMGC/CMAR price and the departments engineering estimate. The CMGC/CMAR, at a minimum, shall submit a guaranteed maximum price and the percentage of work to be performed by its own forces for consideration by the department. Upon successful negotiations by the department and CMGC/CMAR, a construction contract will be executed specifying the guaranteed maximum price and the percentage of work to be performed by its own forces.

Should the department or designee be unable to negotiate a satisfactory construction contract with the CMGC/CMAR, negotiations shall be terminated. The department shall have the option to competitively bid the construction of the project by the design/bid/build method. The CMGC/CMAR contractor will be allowed to bid on the project.

- E. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-131 NMSA 1978 and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is terminated shall not be disclosed so as to be available to competing offerors.
- F. After a CMGC/CMAR contract is awarded, the selection committee shall make the names of all offerors and the names of all offerors on the short list and selected for interview available for public inspection along with the selection committee's final ranking and evaluation scores. Offerors who were interviewed but not selected for contract award shall be notified in writing within fifteen days of the award.

Responsibilities of the CMGC/CMAR Following Award of Phase one

- A. The CMGC/CMAR shall be required to assist with project development. Potential tasks under the contract may be:
 - (1) Conduct constructability reviews
 - (2) Participate in value engineering
 - (3) Participate in risk assessments
 - (4) Provide feedback on costs
 - (5) Assist with third party coordination including utilities, railroads, and tribal consultation
 - (6) Participate and assist the design architect/engineer in optimizing the cost and efficiency of the project

Responsibilities of the CMGC/CMAR Following Award of Phase Two

- A. The construction contract with the CMGC/CMAR shall specify:
 - (1) the guaranteed maximum price; and
 - (2) the percentage of the guaranteed maximum price that the CMGC/CMAR will perform with its own work force.
- B. The CMGC/CMAR in cooperation with the department, shall seek to develop subcontractor interest in the project and shall furnish to the department and any architect or engineer representing the department a list of subcontractors who state in writing that they are a responsible bidder or a responsible offeror, including suppliers who are to furnish materials or equipment fabricated to a special design and from whom proposals or bids will be requested for each principal portion of the project. The department and its architect or engineer shall promptly reply in writing to the CMGC/CMAR if the department, architect or engineer knows of any objection to a listed subcontractor or supplier, provided that the receipt of the list shall not require the department, architect or engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the department, architect or engineer later to object to or reject any proposed subcontractor or supplier.
- C. The CMGC/CMAR shall construct the project in accordance with the contract documents

JOB-ORDER-CONTRACTING (JOC) METHOD OF PROJECT DELIVERY

Notwithstanding any other law, the department may use the Job-Order Contracting method of project delivery on a project if the department makes a determination in writing that it is appropriate and in the best interests of the department to use the JOC method of project delivery for that project, except that the department shall not enter into a contract to operate any structure, facility or other item pursuant to this article.

The estimated cost of the project shall not include the cost to procure any right-of-way or other cost of condemnation. The cost to procure any right-of-way or other cost of condemnation remains at all times the responsibility of the department. The department shall obtain all necessary rights-of-way.

The department shall provide notice of each procurement of construction services prescribed in this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of construction services pursuant to the procedures prescribed in this section.

To ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the Secretary shall adopt procedures for procuring a project using the Job-Order Contracting method of project delivery. The procedures shall establish criteria for selecting, procuring, and contracting a project using the JOC method of project delivery.

Job-Order Contracting Determination Factors

The department, in its procedures, shall address the following criteria as a minimum in establishing the basis for determining when to use the job-order contracting method of project delivery:

- A. The extent to which it can adequately define the project requirements.
- B. The time constraints for delivery of the project.
- C. The capability and experience of potential offerors.
- D. The suitability of the project for use of the JOC method of project delivery in the areas of safety, time, schedule, costs and quality.
- E. The capability of the department to manage and oversee the project, including the employment of experienced personnel or outside consultants.
- F. Other criteria the department deems relevant.

Job-Order Contracting Solicitation Process

In the procurement of Job-order contracting construction services the department shall establish a two-phase procedure for awarding a job-order contract.

During phase one:

- A. The department shall issue a request for qualifications for each contract and publish notice of the request for qualifications. The request for qualifications shall include at a minimum the following:
 - 1. A statement of the minimum qualifications for the JOC, including the requirements for:
 - a. A contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act;
 - b. Registration pursuant to Section 13-4-13.1 NMSA 1978;
 - c. A minimum bond capacity
 - 2. A statement of the scope of work to be performed, including:
 - a. The location of the project;
 - b. A proposed schedule, including a deadline for submission of the statements of qualification;

- c. Specific project requirements and deliverables;
- d. The composition of the selection committee;
- e. A description of the process the selection committee shall use to evaluate qualifications;
- f. A proposed contract.

3. Include the number of offerors to be included on a short list.
4. State the selection criteria and relative weight to be used in compiling a short list.
5. State whether interviews with offerors will be held and under what circumstances.

B. The Secretary shall appoint a selection committee of at least three persons. At least one-half of the selection committee shall be architects or engineers who are registered pursuant to chapter 61, article 23 NMSA 1978 or chapter 61, article 15. The selection committee members may be either department employees, outside consultants, or licensed contractors. Any consultant or contractor who is serving on the selection committee and who is not a department employee shall not be otherwise involved in the procurement as an offeror or in any other capacity.

The selection committee shall:

1. Evaluate the statements of qualifications submitted by the offerors and shall compile a short list in accordance with technical and qualifications-based criteria;
2. Pursuant to the request for qualifications, determine if interviews are required, and if required, conduct interviews with the short list of offerors

During phase two:

- A. The department shall issue a request for proposals to the short list of offerors. The request for proposals shall include:
 1. Scope of work and bid items for the JOC
 2. Description of selection criteria and their relative weight
 3. An explanation of how the proposal will be scored and how the selection will be made
 4. A requirement that each offeror submit separately a technical proposal and a price proposal responsive to the request for proposals or else the offerors proposal will be rejected
 5. A statement, if the department chooses, to allow clarifying discussions with offerors, that the selection team will conduct discussions with an offeror who submits a preliminary technical proposal for the purpose of clarifying and understanding the request for proposals
 6. A statement that final technical proposals will be evaluated and scored before price proposals are opened, evaluated and scored
 7. A statement that a contract will be awarded to the offeror whose proposal receives the highest combined technical and price score or to more than one offeror based on the highest, and then sequentially the next highest, score
 8. Other information relevant to the contract
- B. If the department chooses and provides notice in the request for proposals, the selection committee shall conduct discussions with offerors who submit preliminary technical proposals in order to promote understanding of and responsiveness to the request. The department and the selection committee shall not disclose information gathered from an offeror during discussions to another offeror.
- C. Following discussions or as otherwise requested by the department, offerors shall separately submit their best and final technical proposals and their price proposals.
- D. Upon submission of all best and final technical proposals and price proposals, the selection committee shall open, evaluate and score all technical proposals received and then open, evaluate and score price proposals using only the criteria stated in the request for proposals.
- E. The department may:

1. Award the contract to the offeror whose proposal receives the highest combined technical and price score or to more than one offeror based on proposals receiving the highest, and then sequentially the next highest, combined score; or
 2. Reject all proposals
- F. If only one offeror responds to a solicitation, the department may award the contract to a single offeror if the department determines in writing that the offerors technical proposal is responsive to the request for proposals, the offerors price proposal is fair and reasonable and other prospective offerors had a reasonable opportunity to respond.
- G. After a contract is awarded, the department shall make the names of all offerors and the names of all offerors selected for interview available for public inspection together with the selection committee's final ranking and evaluation scores and shall maintain those conclusions in the records of the contract awarded.

Job-Order Contracting Construction – Project Delivery

- A. Each time the department desires construction pursuant to a job-order contract, the department shall issue a job order to the contractor specifying the construction project's scope of work, work schedule and materials.
- B. The contractor for job-order-contracting construction services shall be licensed to perform construction pursuant to chapter 60, article 13 NMSA 1978.
- C. For each project pursuant to a job-order contract, the contractor shall perform, with the contractor's own forces, construction work that amounts to not less than 50% of the total project price for construction. The total contract price for construction does not include the cost of preconstruction services, design services or any other related services or the cost of acquiring any right of way.
- D. The contractor for job-order-contracting construction services is not required to be registered to perform design services pursuant to chapter 61, article 23 NMSA 1978 or chapter 61, article 24B NMSA 1978 if the offeror actually performing the design services on behalf of the contractor is appropriately registered.
- E. A job-order contract may be entered into for a multiple term of up to four years if the term of the contract and conditions of renewal or extension are included in the request for qualifications or request for proposals and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years in the contract term are subject to the availability and appropriation of funds for those purposes.
- F. Before the use of a multiple-term job-order contract, the department shall determine in writing that:
- a. estimated construction requirements cover the period of the contract and are reasonable and continuing
 - b. The contract serves the best interests of the department by encouraging effective competition or by promoting economies in the department's procurement requirements.
- G. If money is not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year, the multi-term job-order contract shall be canceled and the contractor reimbursed only for the reasonable value of any nonrecurring costs that are incurred but not amortized in the price of the construction delivered under the contract or that are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for that purpose. A contractor shall not be entitled to compensation for a decision to not renew or extend a contract.